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TENANT-LANDLORD PROBLEMS

INTRODUCTION

Conflict between Tenants and Landlords is on the increase as the supply of dwelling units falls farther behind the demand for them accompanied by rising rents and complaints by tenants about the maintenance of their units. The problem is preponderantly urban in site, while paradoxically rural in origin in the institutional and legal sense.

In California, as in most other states of the Union, the English Common Law forms the basis of the judicial system adopted in the state Constitution. English Common Law developed in a rural, agrarian setting where tenant-landlord relationships were based on rented land being a productive factor and housing for the tenant and his family being merely incidental to his use of the land. It was up to the tenant to repair and maintain his own house, while the rents he paid were compensation for the current use of a productive resource, the ownership rights to which were held by the landlord. In common law the landlord could actually force the tenant to make repairs and maintain buildings on pain of termination of the lease.

Such an approach is clearly inappropriate in an urban setting where the dwelling unit itself is the sole good being paid for and the money rents received for the dwelling unit are used to defray the cost of ownership to the landlord. Yet, the courts in ruling on disputes between tenants and landlords, base findings on the rule of the common law. Thus tenants are placed in a disadvantageous position in dealing with landlords as owners. Because the current

rental market is a sellers' market, tenants and particularly poor tenants are doubly disadvantaged.

Poor tenants as a class, thus, have two handicaps to overcome in dealing with landlords or, conversely, landlords have two major advantages in negotiating with tenants as to lease terms. The institutional factor (existing law) is apt to be modified, but slowly, while the economic factor can shift relatively easily if the stock of rental housing is expanded sharply as a result of overbuilding, as happened in the recent past.

THE PUBLIC INTEREST

What is the nature of the public interest in tenant-landlord relationships?

Firstly, that in a bargaining situation, the public interest demands an equalizing of bargaining power between groups or classes lest one group or class exploit the other. This has been recognized, for example, in the field of labor relations in the United States in the form of the National Labor Relations Board and collective bargaining.

Secondly, that the need for a decent house in a suitable environment for all families is recognized in the various Housing Acts passed by the Congress. Landlords provide housing to renters and the relationship between tenants and landlords very materially affects the quality and quantity of housing available for rentals.

Thirdly, that the cost of housing or shelter, i.e., rents, is an important item in a family budget and competes directly with other items such as food and clothing and transportation to the extent that it may greatly distort the disposal of family income to the neglect of the critical needs of children.

Of the three aspects of the public interest just noted, certainly the equalizing of bargaining power between tenants and landlords constitutes a legitimate public goal. Tenants (representing demand) historically have acted in an atomistic and unorganized fashion, in the immediate need, taking what is offered at the time for the rental figure demanded. Landlords (representing supply), many fewer in number, often act in concert. This is done through well-knit organizations, and maintaining prices (rents) in a cohesive fashion. They also effectively influence legislative and administrative bodies having the capacity to affect costs and conditions. How the equalizing of bargaining power between tenants and landlords is accomplished materially affects other public interest problems both directly and indirectly.

The public interest in housing in general is expressed in building and safety codes, zoning, and in a host of other ways, so that an interest in the tenant-landlord relationship is a legitimate concern.

The tenant's interest lies in being able to obtain adequate and acceptable housing in an area or neighborhood of his choice at a rent he can afford, generally agreed to be no more than 25 percent of his monthly income. The dimensions of "adequate," "acceptable," and "choice" are so many that only a few main ones can be touched on here such as (a) available space in the dwelling unit itself for the number of occupants; (b) its location with respect to public transportation, shopping, schools, etc.; and in addition, (c) how the landlord or his agent maintains the physical plant and its amenities and responds to complaints by tenants.

The landlord's interest lies in being able to maintain full tenant occupancy at rental and collection rates sufficient to cover direct operating and maintenance costs, plus an acceptable return on the investment. Here again,

the dimensions of "costs," "collection rates," and "acceptable return" are so varied as to require focus on only the most important. Many landlord's costs are beyond his direct control such as property taxes, interest rates, etc.; and those costs which he can control in the short run may have long run consequences for himself, his tenants and often for the neighborhood.

The effect of conflict between the interests of tenants and those of landlords carries over into the public sphere in manifold ways. For example, maintenance of buildings and landscaping by landlords often affects the aspect of whole neighborhoods, property values, tax revenues, etc., while a tenant's overcrowding of rented dwelling units in a building not only directly affects the structure itself but also often less directly leads to neighborhood deterioration, school, transportation, fire, and a welter of other problems.

As the weaker of the two contestants, ordinarily (though not always) the tenant is bested. A major reason for this lies in the atomistic character of tenantry, the absence of concerted action with other tenants. Tenant organizations are appearing in all the major metropolitan areas of the United States, in recognition of the social fact that there is strength in numbers. Tenant organizations are found principally among low income and minority groups, i.e. those most immediately affected by poor housing and the impact of rents or changes in rents. Many tenant organizations have begun as ad hoc groups around some limited issue, have succeeded in exacting a concession, or two, from a landlord and then disbanded until it became clear that a continuing organization was required.

With the continued failure of the building industry to provide sufficient housing for middle class demand and with sharply rising rents, it is not

unlikely that some middle-class renter's organizations may develop and possibly coalesce with other lower-income tenants' organizations.

Tenants' organizations if sufficiently strong are in a position to negotiate with landlords for their own members, and non-member tenants as well, in particular instances. Given the tight rental market existing in most cities, the tenants' organization has to use adroit tactics to gain its ends. A tenants' organization has a relatively limited arsenal, consisting of persuasion, public exposure, harassment and threat, with few legal weapons to use. One of the anomalies of the whole building code-housing code phenomena is the fact that tenants cannot directly bring suit against a landlord for code violation, but must act through a governmental agency usually the housing department or public health department or public works department of a municipality or county who in turn proceed through another layer--the city or county attorney or district attorney. (It is difficult and often unproductive to attempt to penetrate the apathy and outright unwillingness of many public agencies to move against landlords despite evident violation of the law.)

As noted before, for the most part the landlords have the law on their side in disputes with tenants. On the other hand, landlords as a group, being by definition persons of property, are significantly more sensitive to public pressures, publicity, and harassment than are tenants as a group. This is an advantage which can be and has been used effectively by tenant organizations to a moderate extent. However, hard-nosed landlords who are impervious to public obloquy cannot be moved to bargaining by this tactic. Since the latter are few in number, whereas the preponderance of landlords seek to avoid "trouble" and particularly wish not to be cast in the role of heartless exploiters of the poor, the majority of landlords are quite prone to respond to persuasion or threats of public exposure out of tenderness for their self image which

renders them peculiarly vulnerable. Of course, the landlord has the same opportunity to use public pressure and publicity as has the tenant, but its effect is scattered. A tenants' organization can zero in on a single landlord, whereas a landlord has a much more diffuse target--his tenants--and it is easier for him to use the courts to rid himself of them one at a time if he chooses.

ALTERNATIVES

We thus come to the point of conflict between the interests of the landlord and those of the tenant, and find that there are many areas of conflict that are not met equitably by recourse to landlord-tenant law. What are the alternatives available to compromise conflict in the public interest? Consideration of some alternatives follow:

Rent Control. Public rent controls are probably the most drastic of the devices available for compromising conflict between tenants and landlords and probably the least effective over the long run. Rent controls settle one area of conflict only to create others. The major objection to public rent controls is that in effect they ignore changes in the moving equilibrium of economic life, distorting the "free play" of economic forces, and in so doing actually lead to a decrease in the supply of the product--housing--whereas every reasonable effort should be directed to expand the supply in order to meet demand and thereby reduce the major factor engendering conflict.

The rebuttal to this reasoning runs along the line that a host of other factors affect the supply of housing besides the rent level and the absence of rent controls does not guarantee increase in the supply of housing, while lack of controls permits landlords to extract exorbitant rents with impunity, particularly since supply response often lags badly for other reasons.

Where rent controls have operated over a long period of time (5 years or more) as in New York City, the side effects of rent controls would appear to weigh heavily against their continued use. As for rent controls providing a means of compromising conflict, they operate mainly to shift the scene and intensity of conflict. All too often when rents are fixed at existing rates or are changed "across the board" by a public body, landlords respond by avoiding the maintenance and repair with a consequent progressive deterioration of structures and a rising volume of complaints from tenants, directed at lack of maintenance rather than at the rent figure.

Besides the probable dampening effect of rent control on the volume of new dwelling construction, it contributes to long run diminution of existing stock especially under any vigorous code enforcement program. In addition, it encourages all kinds of under-the-table devices such as "key deposits," inordinate cleaning, and damage deposits, etc., etc., etc.; or even open defiance of the whole system of control. This can come about because the courts historically tend to treat landlord violation of rent laws lightly and consequently landlords, particularly large ones, find that on balance they can easily afford the small fines which may be imposed by the court and still come out ahead.

Short of public rent controls, a system of public hearings offers the next most viable means for effecting some type of compromise in tenant-landlord conflicts.

Tenant-Landlord Arbitration Committees. An opportunity to ventilate grievances has a remarkable therapeutic effect on humans. This is particularly true for tenants whose grievances are ignored by landlords or their employees. The opportunity to air grievances could alone commend a public hearing board as a

mechanism for effecting compromise in many tenant-landlord conflicts. A "hearing" board with a capacity to investigate and release findings without any power to enforce its determinations serves a useful purpose as a screening device to separate the lesser grievances from the more difficult ones as well as providing a means of "settling" a remarkably large proportion of these grievances. The threat of an appearance before a hearing board when used by a tenant can be most effective against a timid landlord; (only a relatively few landlords have horns and tails despite the rhetoric of tenant union organizers). In the recent Sternberg study of rent control in New York, an estimate is made that the threat of court action is more effective in eliciting a response from a landlord, than is an actual case of a court action. All this really means, as mentioned above, is that only the toughest cases need to go to court, and in the vast majority of instances compromise of conflict of interests can be accomplished at some point short of legal action.

One of these points on the scale extending from simple discussion to court action is a quasi-official tenant-landlord hearing or arbitration board. Such a board can function as a mechanism for getting issues into the open for both tenant and landlord; it can also act as a coercive means of forcing settlement, depending on how much power it is given, can accrue through exposure and publicity, or is delegated by an elected public body.

The membership of a tenant-landlord committee has to have an image of "fairness" rather than one of impartiality, because all parties to rent disputes recognize a difference in interests between the parties, and only the naive or dishonest attempt to equate the two parties interests as coinciding. Thus, a committee such as the present Tenant-Landlord Hearing Committee in San Jose, made up of an equal number of tenant and landlord representatives, plus an odd neutral member, has thus far not been accused of being "unfair" despite the fact that the members are far from impartial. They have been charged with being

ineffectual but not unfair. Conceivably such a public committee could be vested with considerable powers and have a significant influence on rents and rent practices, but this would require a staff to accomplish instead of the kind of ad hoc voluntary activity currently the practice in San Jose.

A third means of settling disputes between tenants and landlords is the Rent Strike, in which action is initiated by tenants against landlords using the device of non-payment of rent or rent withholding to attain some immediate or eventual end.

Rent Strikes. The rent strike is a means of initiating a settlement of tenant-landlord disputes by bringing them to a head through the withholding of rents by the tenants in an attempt to coerce the landlord into negotiation with a group of tenants rather than with individual tenants. A great number of issues are raised by a rent strike, and it has been argued that a rent strike is not in the public interest since it pits tenants against landlords in a test of economic strength outside the customary channels of negotiation leading to the public display of conflict and tensions which it is in the public interest to avoid. Since the courts are still available, most rent strikes are accompanied by court actions of one kind or another. The issues in rent strikes are generally tried in the newspapers first, but finally in the courts through one of three routes, the injunctive, the trespass, or the eviction suit.

In a rent strike, time is on the side of the tenants since the longer they succeed in withholding rents, the greater is the economic pressure on the landlord, in addition to which, the greater is the opportunity for picketing and other harassing actions against the landlord, with relatively lesser opportunity for counteraction by the landlord against the tenants. Picketing is still regarded by large numbers of middle class persons as unseemly and

distasteful and since guilt-by-association is a built-in hazard for "respectable" landowners, the public interest as viewed by a substantial block of citizens lies in the direction of forestalling ugly displays of the underlying antagonism between the interest of tenant and landlord. Even more insupportable for them is the clash of interest between the "poor" tenant and the "well-to-do" landlord.

The spectacle of a rent strike too nearly gives the lie to the American shibboleth of equality and harmony by its display of the basic class inequality and disharmony between tenant and landlord. Moreover, the invoking of open collective action by tenants is the very antithesis of the man-to-man mystique which is part of the individualist tradition of the archetypal pioneer spirit said to be the touchstone of American enterprise.

In short, rent strikes though they serve as a mechanism for settling disputes are generally not looked upon with favor as being in the public interest; wherefore, some acceptable alternative is needed, and as evidenced by recent actions in a number of cities, an appeal or hearing or arbitration board appears to serve this purpose.

The auspices under which a committee or board or group is set up varies from place to place, some being self-appointed bodies established by landlords to head-off rent control or some other to-be-feared alternative as has recently happened in San Francisco. Others have been set up by city councils in response to tenants demands for rent control. This occurred in San Jose, in fact, to head-off a real examination of tenant problems, and similarly in the case of Berkeley. As far as such a body's ability to deal with fundamental problems in the field of tenant-landlord relations, it can be succinctly characterized as exemplifying "an open-mouthed policy with no teeth in it."

Yet of the two other alternatives set out above, it can be said that both are too drastic to be acceptable. Rent control results in too great a distortion of the economic processes influencing supply, while rent strikes are marked by an unacceptable public level of social tension, and thus, a voluntary or quasi-voluntary means of compromising disputes has the appeal of being least objectionable.

Precisely because it is the least objectionable, it is also the least effective in dealing with hard-core problems but as a window-dressing device it is probably without peer.

Clearly, what is needed in the face of the magnitude of the problems is a kind of multi-staged setup, starting with a hearing committee to take care of the majority of the simple grievances and complaints which are easy to settle, proceeding next to an adjudication mechanism for dealing with more difficult issues not amenable to a simple "hearing" procedure, quasi-judicial in nature, and with some administrative means of enforcement. Finally, there could be a "Housing Court" with simple judicial powers. In any case, there would be appeal to the existing courts for final settlement of disputes.

What is needed in all such matters is dispatch in the settlement of conflict. The provision of new means to accomplish this end encourages early settlement, relieves the local courts of part of their case load, and works to the disadvantage of no one.

Perhaps a new "truth-in-renting" law is needed to let tenants know what they are getting and are not getting when they sign leases. A first step in this direction would be the establishment of a model lease, the use of which would have to be forced on landlords through collective tenant action, or public pressure, most likely the former. An equitable lease setting forth the money

conditions, the specifics of the leased unit, and the conditions of termination in clear language would preclude a deal of controversy. Many so-called "standard leases" fail to state the disposition of security deposits on lease termination and thus give rise to completely unnecessary conflict.

In addition to this lack of clarity, many leases clearly drawn in the interests of the landlord and offered by him on a take-it-or-leave-it basis include a clause by virtue of which the tenant waives his rights under Sections 1941 and 1942 of the State Civil Code which explicitly require that the rented property be fit to be occupied, and be maintained in a tenantable condition, or the tenant has the right to use up to a month's rent towards this end. In signing such leases, most tenants are quite unaware of their waiving any rights. Few tenants are in a position to carefully examine leases. For all these reasons a model lease or rental agreement is needed.

The real solution to major tenant-landlord problems is to be found in increasing the supply of new housing so that the levels of rent, and the volume of maintenance reflect an adequate supply, rather than a short supply situation. Even under optimum supply conditions, however, a substantial inequity exists as between the legal rights and remedies of tenants and those of landlords. As United States Supreme Court Justice William O. Douglas observed in *Williams vs. Shaffer*:

"The problem of housing for the poor is one of the most acute facing the Nation. The poor are relegated to ghettos and are beset by substandard housing at exorbitant rents. Because of their lack of bargaining power the poor are made to accept onerous lease terms....Default judgments in eviction proceedings are obtained with machine-gun rapidity since the indigent cannot afford counsel to defend."

The means for reducing the area of inequity are almost exclusively legislative, with some possibilities of judicial reform.

Change in this direction will be slow, but accumulative, and will have considerably greater long-term effect than any temporary increase in supply of housing.

2. A model lease for rental management should be developed and made available, and the law encouraged to supply such an instrument as No. 1.
3. First-landlord rule for eviction in a simplified summary trial procedure is:
 - a. Informal case conference must be requested.
 - b. "Housing Court" to be established under the First Justice and Family Court, and
 - c. Final adjudication by the regular courts.
4. Every effort should be directed toward increasing the supply of housing available for rent by a) for as long as possible a reduction of 5 percent in the rate of rental on new supply and possibly on existing stock; b) to encourage the construction of new rental housing; and c) to encourage the conversion of existing stock.

RECOMMENDATIONS

1. Tenant-Landlord Law in California should be reformed to provide that residential leases require (as in ordinary contracts) that tenants' rights and obligations be matched by landlords' rights and obligations, e.g. in return for the tenants' obligation to pay rent, the landlords' obligation must be to provide and maintain acceptable housing, with civil remedies available to both parties.
2. A model lease and/or rental agreement should be developed and made enforceable, and its use encouraged in fulfillment of Recommendation No. 1.
3. Tenant-Landlord conflicts should be subject to a three-layer conciliation procedure of:
 - a. Informal tenant-landlord hearing opportunities,
 - b. "Housing Courts" to be established under the State Health and Safety Code, and
 - c. Final adjudication by the regular courts.
4. Every effort should be directed toward increasing the supply of housing available for rent in order to provide a minimum of 5 percent vacancy rate to reflect an adequate supply and provide for landlord response to need and redress the present short supply.

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Property Law Reporter, loose leaf service put out by Commerce Clearinghouse, Inc., 420 Lexington Avenue, New York, New York 10017; 4025 West Peterson Avenue, Chicago, Illinois 60646; 425-13th Street, N.W., Washington, D.C. 20004. See generally subject division titled, "Housing, Landlord-Tenant," and in particular, subsection on "Tenant Unions--Corporation" in 2500.

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Manual of Landlord-Tenant Law, National Center for Community Law, Washington, D.C. In particular see 6.1 on "Tenant Unions" at p. 347.

Organizing Handbook, for Immediate Repairs and Services, issued by Metropolitan Council on Housing, 219 Seventh Avenue, New York, New York 10011. Oriented toward New York Law but many useful organizing tips and forms, legal and otherwise.

Tenant Action, Architects Renewal Committee in Harlem (ARCH), 221 West 116 Street, New York, New York 10026. Detailed focus on tenant legal redress in New York City.

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